

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish binaural hearing loss causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On November 27, 2017 appellant, then a 67-year-old retired equipment operator, filed an occupational disease claim (Form CA-2) alleging that his binaural hearing loss was caused by factors of his federal employment.³ He indicated that he first became aware of his condition and its relationship to factors of his federal employment on August 3, 2000. Appellant explained that his delay in filing his claim was because he recently reached a point where his hearing loss was interfering with life functions. He noted that it was hard to hear and distinguish words. The employing establishment controverted the claim.

OWCP subsequently received evidence that included appellant's employment history. Appellant had been exposed to loud noise while employed as an equipment specialist for several employing establishments. He worked at the Naval Air Station field office in Alameda, California from December 1981 to April 1985, the Naval Air Warfare Center field office and ship repair facility in Yokosuka, Japan from April 1985 to March 1988, and the Puget Sound Naval Shipyard from March 1988 to December 2000.

OWCP also received the results of various audiograms administered between August 15, 1978 and August 3, 2000 by the employing establishment for its hearing conservation program. Employing establishment health unit consultation sheets dated January 30 and March 27, 1990 indicated that audiograms performed on January 22 and March 22, 1990 revealed hearing loss.

In a form entitled checklist for filing federal occupational hearing loss claim dated August 2, 2017, appellant indicated that he had a history of tinnitus. He noted that the only hobby he had which exposed him to loud noise was repairing small equipment. Appellant was no longer exposed to hazardous noise at work as of December 1, 2000 when he retired. He had not previously filed a claim for workers' compensation benefits for his current condition or any other condition affecting his ears or hearing. Appellant explained that his last hearing test at the Puget Sound Naval Shipyard indicated hearing loss from occupational noise. He related that the above-noted employing establishments provided safety devices to protect against noise exposure which he utilized.

By development letter dated December 7, 2017, OWCP advised appellant of the deficiencies in his claim. It informed him that he would be scheduled for a second opinion examination for a medical diagnosis and an opinion explaining whether his employment activities/exposure caused, aggravated, or contributed to his diagnosed condition. Appellant was afforded 30 days to respond.

³ The record reflects that appellant retired on December 1, 2000.

In a separate development letter, also dated December 7, 2017, OWCP requested information from the employing establishment, including the location of appellant's job sites where the alleged exposure occurred, sources of exposure to noise and machinery, the decibel and frequency level (to include a noise survey report for each job site) and period of exposure, the types of ear protection and noise attenuation in decibels if known, and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examination, and all audiograms. It also requested employment data and the date of last exposure to hazardous noise and the pay rate in effect on that date. The employing establishment was afforded 30 days to respond. No response was received.

By letter dated March 20, 2018, OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Edward L. Treyve, a Board-certified otolaryngologist, for a second opinion to determine whether he had sustained employment-related hearing loss.

An April 19, 2018 audiogram performed by M. Rachael Shannon, an audiologist, and signed by Dr. Treyve found that appellant had mild-to-severe sensorineural hearing loss, left greater than the right, and very poor speech discrimination. He was also found to have 39.38 percent binaural hearing loss and would benefit from binaural hearing aids.

Dr. Treyve, in an April 19, 2018 report, reviewed the SOAF and medical record, noted appellant's hearing loss and employment history, and discussed findings on physical examination. He diagnosed asymmetric binaural sensorineural hearing loss. Dr. Treyve found that appellant's described workplace exposure was of sufficient intensity and duration to have "potentially caused" the hearing loss. However, he opined that the binaural sensorineural hearing loss was not due to his occupational noise exposure. Dr. Treyve opined that the diagnosed hearing loss was due to undiagnosed degenerative causes. He explained that there was a symmetric history of noise exposure over the years with no hearing loss manifested in the right ear until 2000 and in the left ear until 1990. Dr. Treyve maintained that this was very atypical for occupational noise exposure occurring only late in a work career. He also maintained that the asymmetry, without obvious cause, was atypical. Dr. Treyve recommended binaural hearing aids and indicated that this need for hearing aids was more likely than not unrelated to his occupational noise exposure.

By decision dated May 22, 2018, OWCP denied appellant's hearing loss claim finding that the evidence of record was insufficient to establish that his hearing loss was causally related to the accepted work event(s). It determined that the April 19, 2018 report from Dr. Treyve represented the weight of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any

⁴ *Supra* note 1.

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁷ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁸ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹

The claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that his or her hearing loss was causally related to noise exposure in his or her federal employment.¹⁰ Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.¹¹

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹² Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³ The weight of medical evidence is determined

⁵ See *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ See *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ See *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ See *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁹ See *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁰ See *T.C.*, Docket No. 17-0872 (issued October 5, 2017).

¹¹ See *D.S.*, Docket No. 16-0903 (issued September 8, 2016); *Lourdes Harris*, 45 ECAB 545, 547 (1994); *John W. Butler*, 39 ECAB 852 (1988).

¹² See *Elizabeth H. Kramm*, 57 ECAB 117, 123 (2005).

¹³ See *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale express in support of the physician's opinion.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish binaural hearing loss causally related to the accepted factors of his federal employment.

Appellant submitted the employing establishment's audiograms dated August 15, 1978 and August 3, 2000. As these audiograms lack proper certification of calibration, speech testing, and bone conduction scores and were not prepared or certified as accurate by a physician as defined under FECA, they do not constitute probative medical evidence.¹⁵

OWCP properly referred appellant for an audiological and otologic evaluation by Dr. Treyve. On April 19, 2018 Dr. Treyve examined appellant and reviewed the medical record, including the audiograms conducted during his federal employment and the audiogram performed by Ms. Shannon that day. He diagnosed binaural sensorineural hearing loss, but concluded that this hearing loss was not due to work-related noise exposure. Rather, Dr. Treyve opined that appellant's hearing loss was due to undiagnosed degenerative causes. He reasoned that there was a symmetric history of noise exposure over the years with no hearing loss manifested in the right ear until 2000 and in the left ear until 1990. Dr. Treyve noted that this was very atypical for occupational noise exposure occurring only late in a work career. He maintained that the asymmetry, without obvious cause, was atypical. Dr. Treyve recommended binaural hearing aids, but indicated that this was more likely than not unrelated to his occupational noise exposure.

The Board finds that Dr. Treyve's April 19, 2018 report represents the weight of the medical evidence and establishes that appellant's binaural hearing loss was not due to exposure to noise in the workplace.¹⁶ Dr. Treyve's opinion is based on a proper factual and medical history as he reviewed current and previous audiometric test results and related his findings on examination and testing in support of his opinion that appellant's hearing loss was not due to the noise in his federal employment.¹⁷

On appeal appellant disagrees with the opinion of Dr. Treyve that his hearing loss was atypical for occupational noise exposure. He contends that an August 3, 2000 audiogram clearly shows noise-induced hearing loss. As noted above, however, Dr. Treyve's opinion was entitled to the weight of the medical opinion evidence and established that appellant had no binaural hearing loss causally related to the accepted factors of his employment.

¹⁴ *Id.*

¹⁵ See *R.B.*, Docket No. 18-0720 (issued November 13, 2018); *M.I.*, Docket No. 16-0759 (issued June 10, 2016).

¹⁶ *R.B.*, *id.*; *R.J.*, Docket No. 11-1644 (issued February 14, 2012); *J.L.*, Docket No. 07-1740 (issued December 20, 2007).

¹⁷ *R.B.*, *id.*; *T.T.*, Docket No. 17-0471 (issued August 8, 2017).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish binaural hearing loss causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board